

USDC SCAN INDEX SHEET



STEPHEN W BONEY INC

BONEY SERVICES INC

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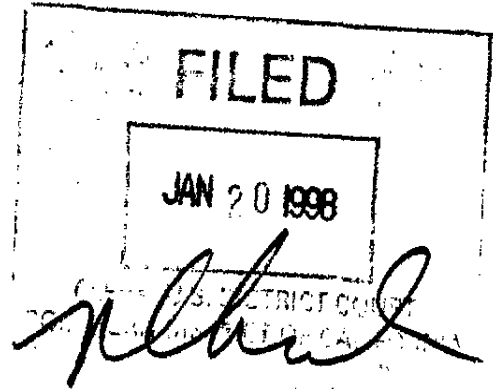
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\*DECL.\*

ORIGINAL

Janice Patrice Brown, Esq. (#114433)  
 J. Scott Scheper, Esq. (#155477)  
 SELTZER CAPLAN WILKINS & McMAHON  
 A Professional Corporation  
 2100 Symphony Towers  
 750 B Street  
 San Diego, California 92101  
 Telephone: (619) 685-3003

Attorneys for Defendant  
 BONEY'S SERVICES, INC.



## UNITED STATES DISTRICT COURT

## SOUTHERN DISTRICT OF CALIFORNIA

STEPHEN W. BONEY, INC.,	)	CASE NO. 950491E (POR)
	)	
Plaintiff,	)	DECLARATION OF JANICE PATRICE BROWN
	)	IN OPPOSITION TO PLAINTIFF'S MOTION
vs.	)	FOR PARTIAL SUMMARY JUDGMENT
	)	
BONEY'S SERVICES, INC.,	)	DATE: February 2, 1998
	)	TIME: 10:30 a.m.
Defendant.	)	COURTROOM: 3
	)	JUDGE: William B. Enright
	)	

I, Janice P. Brown, declare as follows:

1. I am a member of Seltzer Caplan Wilkins & McMahon, counsel of record for defendant Boney's Services, Inc. ("BSI"). I have personal knowledge of the facts set forth in this declaration and could and would testify to those facts if called as a witness.

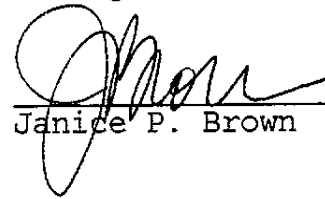
2. Attached at Exhibit "A" to this Declaration is a true and correct copies of select pages of the Deposition Transcript of Steve Boney, Volume II, taken on July 19, 1995.

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CP

1 I declare the following under penalties of perjury under the laws  
2 of the United States of America.

3 Executed on January 19, 1998, in San Diego, California.

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5 Janice P. Brown  
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CERTIFIED COPY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

STEPHEN W. BONEY, INC.

PLAINTIFF

NO. 950491E (POR)

VS.

DEPOSITION OF

BONEY'S SERVICES, INC.

STEPHEN W. BONEY

DEFENDANTS

VOLUME II

(Pages 181 - 351)

TAKEN ON Wednesday, July 19, 1995

TAKEN AT 450 B Street, Suite 2100  
San Diego, California

REPORTED BY DEBRA A. COVELL  
CSR NO. 6870

Vail  
Christians  
& Associates

Certified Shorthand Reporters  
550 West C Street, Suite 1440 • San Diego, California 92101-8511  
(619) 544-8344 • FAX 544-8345

EXHIBIT A



1 APPEARANCES:

2 PLAINTIFF: ARTER & HADDEN  
3 401 West A Street, 26th Floor  
4 San Diego, California 92101  
5 BY: HENRY G. KOHLMANN

6 ARTER & HADDEN  
7 201 California Street, 14th Floor  
8 San Francisco, California 94111  
9 BY: DENNIS MCATEER

10 DEFENDANT: SELTZER CAPLAN WILKINS & McMAHON  
11 750 B Street, Suite 2100  
12 San Diego, California 92101  
13 BY: JANICE PATRICE BROWN

14 VIDEOGRAPHER: AJL VIDEO TAPING SERVICES  
15 1919 Grand Avenue, Suite 2C  
16 San Diego, California 92109  
17 BY: ROBERT JORDAN

18 ALSO PRESENT: STANLEY BONEY  
19 SCOTT BONEY  
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1 Boney's Marketplace in writing?

2 A. No.

3 Q. Who did you tell, if anyone, that they should  
4 use the trade name Boney's Marketplace?

5 A. Stan Boney.

6 Q. Why did you tell him that they should use --  
7 and by "they," Scott and Stan -- should use the name

10:29:00 8 Boney's Marketplace for their El Cajon and Vista stores?

9 A. I think I was asked.

10 Q. Who asked you?

11 A. Stan.

12 Q. And what did he ask you?

13 A. If I thought the name Boney's would sound  
14 good on the stores.

15 Q. Any other -- is there any other facts that  
10:29:30 16 you can recall that support the allegation in the  
17 complaint that you advised Stan and Scott to commence  
18 using the trade name Boney's Marketplace for the El Cajon  
19 and Vista stores?

20 A. No.

21 Q. So you recall prior to the opening of the  
22 El Cajon and Vista stores by your brother that Stan asked  
23 you whether you thought that the name Boney's would sound  
10:30:00 24 good on the stores?

25 A. Yes.

26 Q. And that is the sole basis for that part of  
27 the allegation in the complaint?

28 A. Yes.

1 other -- of the conversation?

2 A. Yes.

3 Q. And what are they?

4 A. I don't want to repeat them.

5 Q. Why not?

6 A. They're personal.

7 MR. McATEER: Are you stating that this doesn't  
8 relate at all to the business of the lawsuit, it's  
9 personal matters?

10 THE WITNESS: Correct.

11 BY MS. BROWN:

12 Q. Did you tell her that you thought things  
13 would be better when your father was dead?

14 A. No.

15 Q. Did you tell Stan or Scott that they should  
10:35:30 16 have outside vendors affix the name Boney's Marketplace on  
10:36:00 17 certain goods back in '82 and '83?

18 A. No.

19 Q. Have your brothers ever helped you?

10:36:30 20 A. What do you mean by "helped"?

21 Q. In any fashion.

22 MR. McATEER: Objection. Overbroad.

23 THE WITNESS: Be more specific.

24 BY MS. BROWN:

25 Q. Okay. In business.

26 MR. McATEER: Objection. Overbroad.

27 THE WITNESS: It depends on which occasion.

28 /////

1 MS. BROWN: Mr. Boney, you're hooked.

2 THE WITNESS: Thank you.

3 THE VIDEOGRAPHER: Off the record at 3:50 p.m.

4 (Recess taken.)

15:50:30 5 THE VIDEOGRAPHER: Back on the record at 3:52 p.m.

15:52:33 6 MR. McATEER: Could you reask your first question  
7 about 68.

8 BY MS. BROWN:

9 Q. Perhaps I can just say, in light of the  
10 conference that you had with your lawyer, do you need to  
11 change your answer to the question I asked you about  
12 paragraph -- I mean, sentence 1 in paragraph 68?

13 A. Yes.

14 Q. Go ahead and answer.

15:53:00 15 A. With regard to the pharmaceutical products  
16 that was actually Windmill Farms private label vitamins  
17 that was changed to be a Boney's label vitamin when the  
18 two Windmill Farm stores were changed to Boney's  
19 Marketplace by Stan and Scott. And that was in 1985 that  
15:53:30 20 we started selling that same line of vitamins in Pacific  
21 Beach under that label.

22 Then in regard to bakery goods and other  
23 foodstuffs, that was actually in 1986, and that was  
15:54:00 24 started in Escondido when we opened that store.

25 Q. And what is meant by the "other foodstuffs"?

26 A. Other foodstuffs would be cookies, would be  
27 muffins, miscellaneous baked items.

28 Q. By "foodstuffs," you mean bakery items



1 basically?

2 A. Yes.

3 Q. And all of the foodstuffs that are mentioned  
15:54:30 4 there were begun by you or your company in 1986 or  
5 thereafter?

6 A. Yes.

7 Q. So the pharmaceuticals that are mentioned in  
8 the first sentence of paragraph 68 actually were at  
9 Steve -- I mean, Stan and Scott's store before you opened  
10 your store?

11 A. Yes.

12 Q. Did you copy Stan and Scott's use of the  
13 pharmaceutical products when you opened up your Escondido  
15:55:00 14 store?

15 A. We used the same suppliers and we used the  
16 same product line and it was packed for and distributed  
17 by, I believe, the Boney's El Cajon.

18 Q. So the answer is yes?

19 A. It wasn't Stan and Scott's then. It was  
20 whatever the entity was, the Boney's Marketplace in  
21 El Cajon.

22 Q. Was it Boney & Boney, Inc.?

23 A. If that's what the ownership was there.

15:55:30 24 Q. So your store in Escondido copied the  
25 pharmaceutical product from Boney & Boney, Inc.?

26 MR. McATEER: That mischaracterizes his testimony.

27 MS. BROWN: No. I'm asking --

28 MR. McATEER: I believe he said he bought it from.

1 BY MS. BROWN:

2 Q. I'm asking the question, okay.

3 Did you copy the pharmaceutical products that  
4 carried the name Boney's Marketplace from the El Cajon  
5 Boney's Marketplace store when you opened your store in  
6 Escondido?

7 A. No. We purchased it from the same supplier,  
8 and that supplier furnished us with that product line.

15:56:00 9 Q. At the time that you purchased it from the  
10 supplier in 1986, your brothers had already been using  
11 that product, correct?

12 A. Correct.

13 Q. They had been selling the pharmaceuticals  
14 with Boney's Marketplace name on it?

15 A. Correct.

16 Q. And you just went to the same supplier and  
17 sold the same product at your stores?

18 A. Correct.

19 Q. Did your -- prior to your opening of the  
20 store -- your store in Escondido, did your brothers have  
21 bakery good items that used the Boney Marketplace name?

15:56:30 22 A. Not that I recall.

23 Q. You can't recall one way or the other?

24 MR. MCATEER: By the way, this subject matter area  
25 was extensively examined by Mr. Courter if you look  
26 through the transcript. And so you're getting into an  
27 area that was fully covered on the bakery goods that they  
28 were supplying and that he was supplying during the















**ORIGINAL**

1 Janice Patrice Brown, Esq. (#114433)  
 J. Scott Scheper, Esq. (#155477)  
 2 SELTZER CAPLAN WILKINS & McMAHON  
 A Professional Corporation  
 3 2100 Symphony Towers  
 750 B Street  
 4 San Diego, California 92101  
 Telephone: (619) 685-3003  
 5

6 Attorneys for Defendant  
 BONEY'S SERVICES, INC.  
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 8  
 9

10 **UNITED STATES DISTRICT COURT**

11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 STEPHEN W. BONEY, INC.,	)	CASE NO. 950491E (POR)
	)	
13 Plaintiff,	)	DECLARATION OF SERVICE BY
	)	FACSIMILE AND FEDERAL EXPRESS
14 vs.	)	
	)	
15 BONEY'S SERVICES, INC.,	)	
	)	
16 Defendant.	)	

17  
 18 **DECLARATION OF SERVICE BY FACSIMILE AND FEDERAL EXPRESS**

19 I, the undersigned, hereby declare that I am over the age of  
 20 eighteen years and not a party to this action; I am employed in the  
 21 County of San Diego, California; my business address is 2100 Symphony  
 22 Towers, 750 B Street, San Diego, California 92101; and that I served  
 23 the following document:

24 MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO  
 PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT;

25 DECLARATION OF STANLEY BONEY OPPOSITION TO PLAINTIFF'S MOTION  
 26 FOR PARTIAL SUMMARY JUDGMENT; and

27 DECLARATION OF JANICE PATRICE BROWN IN OPPOSITION TO PLAINTIFF'S  
 28 MOTION FOR PARTIAL SUMMARY JUDGMENT

1 on the below named person(s) by faxing a copy and placing a copy in a  
2 separate envelope, for each address named below, and depositing each  
3 to be served via Federal Express, at San Diego, California, on  
4 January 19, 1998.

5 Henry G. Kohlman  
Arter & Hadden  
6 Jamboree Center  
Five Park Plaza, Ste. 1000  
7 Irvine, CA 92714

Attorneys for Plaintiff  
STEPHEN W. BONEY, INC.  
Tel: (714) 252-7500  
Fax: (714) 252-0961

8 Dennis McAteer, Esq.  
Terry J. Mollica, Esq.  
9 Arter & Hadden  
201 California Street, 14th Flr.  
10 San Francisco, CA 94111

Attorneys for Plaintiff  
STEPHEN W. BONEY, INC.

11 I declare under penalty of perjury of the laws of the United  
12 States that the foregoing is true and correct. Executed on  
13 January 19, 1998, at San Diego, California.

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16 Laura L. Brown  
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